

# NEW APPLICATION



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BEFORE THE ARIZONA CORPORATION COMMISSION

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IN THE MATTER OF THE APPLICATION )  
OF GILA LOCAL EXCHANGE CARRIER, ) DOCKET NO. T-20515A-14-0004  
INC. FOR RESCISSION OF BOND )  
REQUIREMENT CONTAINED IN )  
ARIZONA CORPORATION COMMISSION )  
DECISION NO. 70039. )  
)  
)  
)

## APPLICATION

Gila Local Exchange Carrier, Inc. d/b/a Alluvion Communications ("GLEC" or "Applicant") hereby files this application for rescission of the bond requirement in Arizona Corporation Commission ("Commission") Decision No. 70039.

## BACKGROUND

GLEC was certified by the Commission to provide intrastate telecommunications services in Arizona on December 4, 2007. *See* Decision No. 70039. GLEC is a tribal corporation incorporated under the laws of the Gila River Indian Community and is authorized to transact business in Arizona as a foreign corporation. GLEC is in good standing with the

Commission's Corporation Division. GLEC provides telecommunications services to business customers located outside the Gila River Indian Community and does not serve residential customers in Arizona. GLEC does not require deposits from any customers and is not holding any customer deposits.

When GLEC was certified by the Commission in 2007, it was standard practice for Commission Staff to require a performance bond. Decision No. 70039 requires GLEC to maintain a performance bond in the amount of \$235,000, which reflects \$10,000 for resold long distance, \$25,000 for resold local exchange, \$100,000 for facilities-based long distance, and \$100,000 for facilities-based local exchange. Decision 70039 para. 27. GLEC has maintained a letter of credit (an authorized means of meeting the bond requirement), since issuance of Decision 70039. This letter of credit is costly to the company and will need to be renewed again in the second quarter of 2014.

### **ANALYSIS**

"In appropriate circumstances, the Commission may require, as a precondition to certification, the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust." A.A.C. R14-2-1105(D). GLEC is subject to the Arizona Competitive Telecommunications Services Rules, A.A.C. R14-2-1101-1115, and must comply with all rules applicable to the provision of intrastate telecommunications services under the terms of its certification. Decision No. 70039 p. 9, para. 49(a). While the Commission may require a performance bond, for the reasons set forth below continuing this requirement for established competitive telecommunications companies is unnecessary, costly and ultimately leads to higher retail rates.

## **1. Excellent Record of Compliance**

GLEC has been certified in Arizona since 2007. Through-out this period, GLEC has complied with the requirements of its certification, including filing annual reports, paying annual assessments for funding the ACC and RUCO (A.R.S. §40-401; §40-401.01) and funding Arizona universal service. No formal complaints have been lodged with the Commission against GLEC. GLEC is unaware of any informal complaints, and strives to resolve any customer concern immediately without the involvement of any regulatory agency. The letter of credit GLEC has maintained since 2007 has never been drawn upon or requested. Obtaining and maintaining this letter of credit creates an expense for GLEC and prevents GLEC from using those resources to grow its network or reduce prices to customers.

## **2. The Bond Requirement Is Neither Necessary Nor Reasonable.**

The Commission “*may* require . . . the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers.” A.A.C. R14-2-1105(D) (emphasis added). This rule was invoked by the Commission, as early as 2000, to protect consumers in the event a telecommunications carrier declared bankruptcy or abandoned service. *See, e.g.,* Decision No. 62751 (2000) (*Eschelon Telecom of Arizona CC&N Application*). At that time, many providers were new to Arizona and few carriers had invested in equipment and facilities. The new competitive local exchange carriers (“CLECs”) did not have demonstrable operating histories, nor could they offer track records of customer satisfaction. During this period, a bond requirement was the vehicle selected by Commission Staff to protect consumers in the event a provider could not meet its legal

obligations. Bonds were one way for the Commission to protect customer deposits from asset-less companies with few ties to Arizona.

Now, thirteen years later, the market is very different. Far fewer telecommunications companies remain, and most of those remaining have invested in Arizona. CLECs own switches, equipment and fiber cable valued in the millions. Customer deposits and advances are no more at risk with an established, facilities-based CLEC like GLEC than they are with Qwest Corporation, Cox or Sprint – all of which operate in competition with facilities-based CLECs but carry no performance bonds benefiting the Commission. GLEC has invested in Arizona infrastructure, its employee base and its customers. Further, GLEC does not require customer deposits or prepayments and is not holding any customer deposits today. GLEC executive and employees are available in Arizona to respond to any Commission concerns at any time and without delay.

### **3. The Commission is Moving Towards Requiring a Bond Only When Warranted**

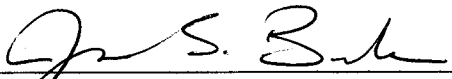
The Commission recently approved a carrier certification request without requiring a bond of the applicant. *See* TNCI Operating Company, LLC T-20882A-13-0108. In recommending approval of the TNCA certification application, Staff recommended no bond reflecting an appropriate reaction to changes in the competitive telecom market. Staff has recommended a “case by case” analysis for assessing the need for a bond. This makes sense. The Commission retains full authority to impose a bond if Staff is concerned about a company’s managerial or technical ability to provide service in Arizona. Companies like GLEC, however, that have been providing service for years, hold no customer deposits, show no history of customer complaints or problems, and have demonstrated their technical and managerial expertise to provide service, should not be required to post a bond.

## CONCLUSION

For the foregoing reasons, GLEC respectfully requests an order rescinding the bond requirement included in Decision No. 70039.

RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of January 2014.

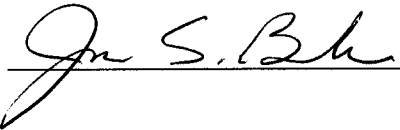
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**d/b/a Alluvion Communications**

**ORIGINAL** and thirteen (13) copies of the foregoing  
filed this 9<sup>th</sup> day of January 2014 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007



4843-5396-0215, v. 1